Federal Communications Commission

Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
	)	CC Docket No. 01-92
	)	
Developing a Unified Intercarrier Compensation Regime	)	
	)	

North County Communications' Reply to Comments to Notice of Proposed Rulemaking

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I. Now Is Not the Time to Tear Down the Telecommunications Industry.

As the United States of America faces its greatest threat to the freedoms we all cherish, there has never been a greater need for a strong and reliable telecommunications industry than exists now. Stability is what Americans crave, need, and demand more than ever before. As the horrors of September 11, 2001 sink ever more deeply into our national psyche, it becomes readily apparent that now is not the time for this body to be tinkering with the fundamental underpinnings of the telecommunications industry and our government institutions by attempting to impose a regime which undermines sound and well-reasoned Congressional and Presidential action.

II. The Industry Has Widely Rejected the NPRM.

The response which the Notice of Proposed Rulemaking received should come as no surprise to the Commission. In terms as generous as can be mustered, it is fair to say that the NPRM suffered from an overwhelming lack of support from those who responded. Support for the Commission's proposed bill-and-keep regime ran no better than 25 %, with the balance ***strongly, indeed, adamantly*** opposed. Opposition ran a wide gamut of the industry: state commissions from Alaska to New York and everywhere in between, associations of governments, competitive local exchange carriers, in excess of 100 rural phone companies, long distance carriers, international carriers, private consultants, internet service providers, and consumer groups. Not unexpectedly, support

came predominantly from the major ILECs which stand to gain the most, at a terrible cost to the consumer.

III. Bill-and-Keep Raises Many More Questions Than Those Posed by the FCC.

Before the Commission takes another step, it needs to answer the following questions, against the backdrop question, which is: What ill or wrong is the Commission attempting to remedy, and are the proposed solutions causing more problems than they purport to resolve?

A. CLEC/ILEC Differences

- Why does the Commission presume that unbalanced traffic is a bad thing?
- Why does the Commission want to guarantee that CLECs will never achieve parity in major markets?
- Why does the Commission want to ensure that only the major ILECs will succeed in the current market?
- After all the Commission put CLECs through this spring, why does it want to deliver a pre-mature death sentence to many of the most successful entrepreneurs to come out of the Telecommunications Act of 1996?
- Why does the Commission want to force CLECs to interconnect with ILECs at innumerable ILEC-based POIs, instead of at one single point based upon sound, modern engineering principles, ESPECIALLY when CLECs already pay the tandem rate to hook up centrally?

- Why does the Commission wish to reward ILECs for their failure to serve ISPs in an economical, technologically-advanced manner?
- Why does the Commission want to punish CLECs for investing substantial resources based upon the groundwork which was laid out in 1996?
- Why does the Commission think that small CLECs have ILEC-type networks and calling patterns?
- Why was the Commission surprised to discover that CLECs served the explosive growth in the Internet by filling the void left by the major ILECs?

B. Consumer Detriment

- Why does the Commission want to ensure that end users' rates will increase exponentially?
- Why does the Commission want small end-users to subsidize large end-users through increased monthly fees?
- Why does the Commission think consumers should pay for calls from telemarketers?
- Why does the Commission want to force fixed-income senior citizens to turn off their phones and answering machines?
- Why does the Commission wish to advance a regime which is not competitively-neutral?
- Why does the Commission wish to threaten universal service by implementing bill-and-keep?

C. Economic Investment

- Why does the Commission want to cut off CLECs from the financial markets' investment support by introducing the uncertainty of bill-and-keep?
- Why does the Commission wish to force businesses to provide services without compensation, robbing them of the ability or inclination to improve services?
- At a time of national crisis, why would the Commission wish to fuel the fires of rampant investor skittishness?

D. State Authority

- Why does the Commission want to tinker with the rate-making authority of state commissions which undoubtedly have a better handle on the local marketplace than Washington ever can?
- Why does the Commission want to tinker with the ability of state commission professionals to arbitrate and mediate local disputes?
- Why does the Commission think that state commissions will sit back and let this happen?

E. Regulatory Uncertainty

- Why does the Commission wish to inject regulatory uncertainty into the industry?
- Why does the Commission want to institute new, complex, burdensome regulatory programs?

- Why does the Commission want to impose a per-minute Internet tax it vowed it would never employ?
- Why does the Commission think it can waive the right to reciprocal compensation, a right which belongs to the carriers individually?

F. Miscellaneous

- Why does the Commission ignore the successful examples of cost-sharing which other industries have enjoyed and which the telecommunications industry has enjoyed as well?
- Why does the Commission favor the theoretical underpinnings of its White Papers over the hard-and-fast reality of increasing the cost of telephone service which they will cause?
- How does the Commission justify discrimination in favor of voice messages over data messages?

IV. The Commission's Discrimination Against ISP-Bound Traffic Cannot Stand.

The Commission's ISP order, which remains fair game in this Rulemaking proceeding, contains numerous dubious provisions that were the target of the commenters' responses. Call them what you will, discriminatory industry-wide price-caps for ISP-bound traffic were imposed based upon nothing more than what isolated carriers had negotiated, leading the Commission to "suggest" that these rates were

appropriate for carriers who had nothing to do with other carriers' negotiations, let alone their respective cost structures.

Not satisfied with price-caps, the Commission also charged in to include growth caps on the CLECs' entrepreneurial spirit to the tune of ten per cent per year, starting the move, not toward Congress's goals or the President's goals, but toward ***its own*** goal of trashing reciprocal compensation and instituting bill-and-keep. Business can grow beyond that figure, CLECs can just forget about the idea of being paid for terminating traffic originating on another network. The idea CLECs have to get used to is working for free, performing a service which ILECs abandoned. The ten per cent rule is designed to prevent market entry by new competitors (i.e., CLECs), because ten per cent of zero is still zero. Starting with no market share, the only place to go would be up, just as long as you don't go above the first rung on a 10-rung ladder. The reality is the Commission's rule will guarantee that nobody new ever steps onto that ladder at all.[1]

What purpose could such a rule have? Logically, it can only be to kill the CLEC industry. For the sake of argument, imagine a CLEC terminating 1,000,000 minutes per month and a major ILEC terminating 50,000,000 minutes per month. The CLEC, through providing superior service and innovative delivery wishes to double the volume of its services. It can get paid for the first 100,000 minutes, but the remaining 900,000 are on the house. Not a very palatable scenario, nor one businesses will enter with great frequency. The major ILEC, on the other hand, can absorb twice that traffic because the

[1] Consider also the price caps imposed by the CLEC Access Charge Order, issued in tandem with the ISP Traffic Order and the NPRM. CLECs who enter new markets after the effective date of the Access Charge Order were limited to charging what local ILECs charge, but existing NECA carriers could continue charging higher, cost-based rates. The effect of this is that there will be no new CLEC expansion whatsoever. What provisions were provided for CLECs who had expended considerable sums in reliance upon existing law, obtained state approval, but simply were not up-and-running as of the effective date. Their investments, along with competition, are dead.

percentage increase is so small, only 4 per cent. On the first 1,000,000 minutes, the CLEC works 900,000 minutes for free, while the ILEC gets paid for the whole amount. Undeniably this was not the goal of the Telecommunications Act of 1996; in fact, it was quite the opposite.

The fantasy doesn't end here, however. The Commission also adopted a "presumption of guilt" that traffic exchanged between LECs in excess of a 3:1 ratio would be presumed ISP-bound and subject to the new compensation regime. Seemingly pulled out of thin air, this ratio once again discriminates against small companies and new entrants in favor of large, well-established carriers. The addition of X number of minutes will be a blip on the radar screen of the major ILECs, adding nothing as a percentage basis to the total number of minutes exchanged; the same number for a small carrier will always constitute a large percentage, pushing it over the edge and inviting a costly and time-consuming fight to prove its percentages. Rare would it be for a more lop-sided, biased regulation to come out of Washington? And for what purpose? After all, a minute is a minute. Why treat ISP traffic as "bad" traffic? What makes such traffic "undesirable" or in some manner or another "lower class" as compared to voice traffic?

This **WAS** a fair fight at one time. Competition worked. When ILECs did nothing to court ISP business, providing poor service at a high price, CLECs filled the void and the ISPs voted with their feet. That fact that ILECs paid CLECs some $ 2 billion dollars annually (a meaningless number by itself without reference to the total number of telecommunications dollars spent industry-wide) to exchange ISP-bound traffic means that CLECs were busy providing service to an indispensable arm of the Internet community, and nothing more sinister than that. Perhaps it bears repeating, once

again, but **it is the policy of the United States** ***to promote the continued development of the Internet*** **and other interactive computer services and other interactive media and to** ***preserve the vibrant and competitive free market that presently exists for the Internet*** **and other interactive computer services,** ***unfettered by Federal or State regulations.*** 47 U.S.C. § 230 (b). If CLECs are forced to pass on their losses to ISPs, ISPs can be expected to pass on these charges to consumers or else pack up shop and close down. This fits neatly into the ILECs' game plan, which is to push toward DSL, which largely benefits the ILECs because they and they alone own the wires. Once ILECS become the predominant ISPs, competition will be dead, and the goals of the Telecommunications Act of 1996 will be but a faint and distant memory.

Respectfully submitted,

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/s/

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